IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 4661 of 1987

For Approval and Signature:

HONOURABLE MR.JUSTICE K.A.PUJ

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

K M SHAH - Petitioner(s)

Versus

STATE BANK OF SAURASHTRA & 3 - Respondent(s)

==========

Appearance :
NOTICE SERVED for Petitioner(s) : None for Petitioner :1,
MR JD AJMERA for Respondent(s) : 1,
None for Respondent(s) : 2 - 3.
NOTICE NOT RECD BACK for Respondent(s) : 4,

==========

CORAM : HONOURABLE MR.JUSTICE K.A.PUJ

Date : 02/02/2006

ORAL JUDGMENT

1. The petitioner has filed this petition under Article 226 of the Constitution of India praying

for declaration that the deduction of Rs.25625.75 is illegal and without authority of law. The petitioner has also prayed for deduction to the respondent authorities to refund the amount of Rs.25,625.75 paise which was illegally deducted by the respondent authorities.

2. The petition was admitted and rule was issued on 22.12.1987. This Court has passed an order on 27.01.2006 directing the office to place SCA No.2579 of 1985 alongwith this matter. SCA No.2579 of 1985, filed by the same petitioner, was heard and disposed of by this Court vide order dated 14.10.2004 the said petition was dismissed and rule was discharged.

3. It is the case of the petitioner in this petition that, the respondent authorities illegally deducted the amount of Rs.25625.75 from the Provident Fund of the petitioner after the petitioner was compulsorily retired in March, 1985. The said action of the respondent authorities was challenged on the ground that the same was in violation of

Regulations 17 (3) of the Employees' Provident Fund Regulations, 1970 framed under Section 63 of the State Bank of India (Subsidiary Banks) Act,1959. The petitioner has therefore submitted that the said action was without any authority of law, arbitrary, capricious and violative of Articles 14 and 16 of the Constitution of India.

4. It is also the case of the petitioner that when the petitioner was working as Assistant Accountant at Dhrangadhra Branch of State Bank of Saurashtra, he was compulsorily retired by the respondent authorities in the year 1985. The petitioner preferred SCA 2579 of 1985 challenging the said order of compulsorily retirement. At the time when the present petition was filed, the earlier petition was already admitted and hence, on 27.01.2006 the Court has directed the office to place the papers of SCA 2579 of 1985 alongwith the present petition. It is the case of the petitioner that since earlier petition was pending, the respondent authorities should not have started deduction treating the petitioner as if he was

regularly superannuated. The respondent bank has sent a cheque of Rs.4215.08 ps accompanied letter 27.07.1987 showing the amount deducted by the bank which was alleged due to the bank. It is further submitted that before sending cheque, respondent authorities had asked for advance receipt by letter dated 28.03.1987. The said letter was accompanied by detailed break up showing petitioner's subscription with interest Bank's contribution with interest etc. The petitioner has relied upon the provisions contained in Regulation 17(3) of the Employees Provident Regulations, 1970.

> " (3)Notwithstanding anything contained sub-regulation (1) when any amount becomes payable under the said sub-regulation to a member, who is under a liability to the Bank, the amount due under such liability (not exceeding in any case the total amount of contribution made by the Bank to his account together with the interest credited in respect thereof) shall be deducted from the amount payable to the member and paid to the Bank."

5. It is therefore contended that respondent authorities were not entitled to deduct the amount which included even petitioner's contribution. The

break up given by the respondent authorities shows that the petitioner's subscription with interest was Rs.18249.33 and the Bank's contribution is Rs.11,591.50. Now as per Regulation 17(3), it is not open to the Bank to deduct any amount of dues exceeding in any case the total amount of contribution made by the Bank to the petitioner's Account. In the present case, the Bank has deducted total Rs.25,625.75. It is further submitted that alleged dues amount were not admitted by the petitioner and there was no adjudication upon the due and therefore, it was not open to the Bank to deduct the amount from the petitioner's provident fund. It is further contended that bank should have taken legal course open to it by way of filing Regular Civil Suit for recovery. As the bank has not taken the legal course open to it and straight way without any adjudication has deducted the amount which was allegedly due from the petitioner, the said deduction becomes absolutely illegal, perverse, arbitrary and violative of Articles 14 and 16 of the Constitution of India. It is therefore, submitted that petition is required to

be allowed and the amount should be ordered to be paid to the petitioner.

6. The petition was filed by learned advocate Late Mr.N.J.Mehta. After his death appearance is filed by the learned advocate who was later on elevated to the bench of this Court. Even thereafter fresh notice was issued on the petitioner and the petitioner was duly served. However, no appearance is filed on behalf of the petitioner, and therefore, it appears to the court that the petitioner is not interested in prosecuting the matter. Even otherwise in the petition itself, the request was made to the effect that since the petitioner has challenged the order of premature compulsory retirement by way of filing S.C.A.No.2579 of 1985, the respondent authorities should not have deducted the alleged dues from the petitioner's provident fund. Now the said petition has already been dismissed and there is nothing on record that the said order is challenged by the petitioner.

7. In this way of the matter the issue regarding compulsory retirement of the petitioner has been concluded and the bank is well within its right to deduct the amount which is due to the bank from the petitioner out of amount which is to be paid to the petitioner.

8. The court is of the view that there is no substance in this petition and hence it does not call for any interference. The petition, is therefore, disposed of. Rule is discharged without any order as to costs.

(K.A.PUJ, J.)

amit